

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

Emily Evans and Melanie Welch,

Plaintiffs,

vs.

Civil Action No.: 3:21-cv-10575

Hon. Robert H. Cleland

The City of Ann Arbor, et al.

Defendants, Jointly and Severally.

Marc M. Susselman (P29481)
43834 Brandywyne Rd.
Canton, MI 48187
Attorney for Plaintiffs
(734) 416-5186
marcsusselman@gmail.com

Sonal H. Mithani (P51984)
mithani@millercanfield.com
(734) 668-7786
Caroline B. Giordano (P76658)
giordanao@millercanfield.com
(734) 668-7732
Attorneys for the Hon. Carol Kuhnke and
Judge Timothy Connors
Miller, Canfield, Paddock and Stone, P.L.C.
101 N. Main St., Ann Arbor, MI 48104

Steven M. Wolock (P38497)
Maddin Hauser
Attorney for Defendant Matthew Krichbaum
28400 Northwestern Highway
Southfield, MI 48034
(248) 354-4030
swolock@maddinhauser.com

Stephen K. Postema (P38871)
Timothy W. Wilhelm (P67675)
Jennifer A. Richards (P79962)
OFFICE OF THE CITY ATTORNEY
Attorneys for Defendants City of Ann
Arbor, Worthington, and Strong
301 E. Huron St., 3rd Floor
Ann Arbor, MI 48107-8647
(734) 794-6170
spostema@a2gov.org
twilhelm@a2gov.org
jrichards@a2gov.org
Mark C. Vanneste (P73001)
Joseph W. Barber (P827728)
450 West Fourth Street
Royal Oak, MI 48067-2557
(248) 723-0456
mv@h2law.com
jwb@h2law.com

Keefe A. Brooks (P31680)
Brooks Wilkins Sharkey & Turco PLLC
Attorneys for Defendants Howard & Howard
PLLC and Wilson
401 S. Old Woodward, Ste. 400
Birmingham, MI 48009
(248) 971-1710
brooks@bwst-law.com

**PLAINTIFFS' EX PARTE MOTION TO FILE AN OVERSIZE BRIEF
OPPOSING THE SELBY ET AL.'S MOTION TO DISMISS**

Plaintiffs, by and through their attorney Marc M. Susselman, pursuant to LR 7.1(d)(2)(A), move to file an oversize brief as Response to Defendants Selby et al.'s Motion To Dismiss Pursuant To FRCP 12(b)(1) and FRCP 12(b)(6), and state as follows:

1. This lawsuit involves a five-year history of proceedings in the Washtenaw County Circuit Court and implicates issues relating to the *Rooker-Feldman* doctrine, issue preclusion under Michigan law, state action under 42 U.S.C. §1983.

2. Defendant Douglas Selby, the CEO of Defendant Meadowlark Builders, LLC, and the 10 other Defendants who are affiliated with Meadowlark, and Michigan Quality Electric, a subcontractor of Meadowlark (collectively referred to as "Selby") have moved to dismiss the 10 federal and state claims pled against them.

3. Given the long history of this litigation, which remains open in the Washtenaw County Circuit Court, Plaintiffs' Counter-Statement of Facts alone consumes a total of 25 ½ pages.

4. Selby *et al.* have mischaracterized the standard of review of a 12(b)(1) motion, which requires correction. They include arguments, in rather conclusory fashion, claiming that the *Rooker-Feldman* doctrine and collateral estoppel bar this lawsuit. Rebutting this superficial analysis has required an additional 15 pages. Rebutting the contention that most of the claims are barred by the statutes of

limitation has required an exposition of Rule 60(b)(6) and equitable tolling, consuming 8 pages. Rebutting the claim that Plaintiffs have failed to state a claim under 42 U.S.C. §1983 on the basis that the Defendants are not state actors has required an exposition on the history of the state action doctrine, consuming another 8 pages. Finally, Selby's contention that the pendent state claims have not been adequately pled has required an additional 7 pages.

5. In order to present a cogent analysis of the applicability of the convoluted facts in this case to the relevant case law, Plaintiffs are requesting that they be permitted to file a Response which exceeds the 25-page limit by an additional 50 pages.

6. If the Court denies the motion, Plaintiffs request that they be granted an additional 7 days to edit the Response down to the page limit which the Court requires.

WHEREFORE, Plaintiffs request that the motion to file an oversized Response brief of 75 pages be granted.

Respectfully submitted,

Marc M. Susselman
Attorney for Plaintiffs

Dated: June 26, 2021